

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Leonel Almonte Tello, et al.,

Plaintiffs,

v.

74 Fifth Ave Market, Corp., et al.

Defendants.

1:18-cv-00210-RA

2018 DEC 13 PM 4:22

SDNY

ANSWER TO COMPLAINT

Defendant, BYUNG LIM (a.k.a. BRUCE LIM), respectfully submits the following

Answer in response to Plaintiff's Complaint¹:

1. Admits the allegations in Paragraph 1 of the Complaint.
2. Admits the allegations in Paragraph 2 of the Complaint.
3. Admits the allegations in Paragraph 3 of the Complaint.
4. Admits the allegations in Paragraph 4 of the Complaint.
5. Admits the allegations in Paragraph 5 of the Complaint.
6. Denies the allegations in Paragraph 6 of the Complaint.
7. Denies the allegations in Paragraph 7 of the Complaint.
8. Denies the allegations in Paragraph 8 of the Complaint.
9. Denies the allegations in Paragraph 9 of the Complaint.
10. Denies the allegations in Paragraph 10 of the Complaint.
11. Denies the allegations in Paragraph 11 of the Complaint.

USDC SDNY
DOCUMENT
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¹ This document was prepared with the assistance of the New York Legal Assistance Group's Legal Clinic for Pro Se Litigants in the SDNY.

12. Paragraph 12 of the Complaint does not require a response. It is a recitation of the basis for the Complaint. To the extent that it requires a response, Defendant denies the allegations in Paragraph 12 of the Complaint.

13. Denies the allegations contained in Paragraph 13 of the Complaint, except admits that Plaintiff purports to proceed as stated therein.

14. Paragraph 14 of the Complaint calls for a legal conclusion and therefore requires no response.

15. Paragraph 15 of the Complaint calls for a legal conclusion and therefore requires no response.

16. Admits the allegations in Paragraph 16 of the Complaint.

17. Admits the allegations in Paragraph 17 of the Complaint.

18. Denies the allegations contained in Paragraph 18 of the Complaint, except admits that Plaintiff purports to proceed as stated therein.

19. Admits the allegations in Paragraph 19 of the Complaint.

20. Admits the allegations in Paragraph 20 of the Complaint.

21. Admits the allegations in Paragraph 21 of the Complaint.

22. Denies that he has an ownership interest in Defendant Corporations, and admits the rest of the allegations in Paragraph 22 of the Complaint.

23. Admits the allegations in Paragraph 23 of the Complaint.

24. Denies that he has an ownership interest in Defendant Corporations, and admits the rest of the allegations in Paragraph 24 of the Complaint.

25. Admits the allegations in Paragraph 25 of the Complaint.

26. Admits the allegations in Paragraph 26 of the Complaint.

27. Paragraph 27 of the Complaint calls for a legal conclusion and therefore requires no response.
28. Paragraph 28 of the Complaint calls for a legal conclusion and therefore requires no response.
29. Denies the allegations in Paragraph 29 of the Complaint.
30. Paragraph 30 of the Complaint calls for a legal conclusion and therefore requires no response.
31. Admits the allegations in Paragraph 31 of the Complaint.
32. The first sentence of Paragraph 32 of the Complaint calls for a legal conclusion and therefore requires no response. Denies the allegations in the second sentence in Paragraph 32 of the Complaint.
33. Admits the allegations in Paragraph 33 of the Complaint.
34. Denies the allegations contained in Paragraph 34 of the Complaint, except admits that Plaintiff purports to proceed as stated therein.
35. Admits the allegations in Paragraph 35 of the Complaint.
36. Admits the allegations in Paragraph 36 of the Complaint.
37. Denies the allegations in Paragraph 37 of the Complaint.
38. Admits the allegations in Paragraph 38 of the Complaint.
39. Denies the allegations in Paragraph 39 of the Complaint.
40. Denies the allegations in Paragraph 40 of the Complaint.
41. Denies the allegations in Paragraph 41 of the Complaint.
42. Admits the allegations in Paragraph 42 of the Complaint.
43. Denies the allegations in Paragraph 43 of the Complaint.

44. Denies the allegations in Paragraph 44 of the Complaint.
45. Denies the allegations in Paragraph 45 of the Complaint.
46. Denies the allegations in Paragraph 46 of the Complaint.
47. Denies the allegations in Paragraph 47 of the Complaint.
48. Admits that Defendants required Plaintiff to sign a document before receiving his wages, but denies the rest of the allegations in Paragraph 48 of the Complaint.
49. Denies the allegations in Paragraph 49 of the Complaint.
50. Paragraph 50 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent a response is required, denies the allegations in Paragraph 50 of the Complaint.
51. Denies the allegations in Paragraph 51 of the Complaint.
52. Paragraph 52 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent a response is required, denies the allegations in Paragraph 52 of the Complaint.
53. Denies the allegations in Paragraph 53 of the Complaint.
54. Denies the allegations in Paragraph 54 of the Complaint.
55. Denies the allegations in Paragraph 55 of the Complaint.
56. Denies the allegations in Paragraph 56 of the Complaint.
57. Denies the allegations in Paragraph 57 of the Complaint.
58. Admits that Defendants required Plaintiff to sign a document before receiving his wages, but denies the rest of the allegations in Paragraph 58 of the Complaint.
59. Denies the allegations in Paragraph 59 of the Complaint.
60. Admits the allegations in Paragraph 60 of the Complaint.

61. Denies the allegations in Paragraph 61 of the Complaint.

62. Denies the allegations in Paragraph 62 of the Complaint.

63. Denies the allegations in Paragraph 63 of the Complaint.

64. Denies the allegations in Paragraph 64 of the Complaint.

65. Paragraph 65 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 65 of the Complaint.

66. Paragraph 66 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 66 of the Complaint.

67. Paragraph 67 of the Complaint does not require a response. It is a recitation of the basis for the Complaint. To the extent that it requires a response, Defendant denies the allegations in Paragraph 67 of the Complaint.

68. Paragraph 68 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 68 of the Complaint.

69. Paragraph 69 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 69 of the Complaint.

70. Defendant incorporates by reference the allegations set forth in the above proceeding paragraphs as if fully and completely set forth herein.

71. Paragraph 71 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent a response is required, admits the allegations in Paragraph 71 of the Complaint.

72. Admits the allegations in Paragraph 72 of the Complaint.

73. Paragraph 73 of the Complaint calls for a legal conclusion and therefore requires no response.

74. Paragraph 74 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 74 of the Complaint.

75. Paragraph 75 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 75 of the Complaint.

76. Paragraph 76 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 76 of the Complaint.

77. Defendant incorporates by reference the allegations set forth in the above proceeding paragraphs as if fully and completely set forth herein.

78. Paragraph 78 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 78 of the Complaint.

79. Paragraph 79 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 79 of the Complaint.

80. Paragraph 80 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 80 of the Complaint.

81. Defendant incorporates by reference the allegations set forth in the above proceeding paragraphs as if fully and completely set forth herein.

82. Paragraph 82 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 82 of the Complaint.

83. Paragraph 83 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 83 of the Complaint.

84. Paragraph 84 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 84 of the Complaint.

85. Defendant incorporates by reference the allegations set forth in the above proceeding paragraphs as if fully and completely set forth herein.

86. Paragraph 86 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 86 of the Complaint.

87. Paragraph 87 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 87 of the Complaint.

88. Defendant incorporates by reference the allegations set forth in the above proceeding paragraphs as if fully and completely set forth herein.

89. Paragraph 89 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 89 of the Complaint.

90. Paragraph 90 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 90 of the Complaint.

91. Defendant incorporates by reference the allegations set forth in the above proceeding paragraphs as if fully and completely set forth herein.

92. Paragraph 92 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 92 of the Complaint.

93. Paragraph 93 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 93 of the Complaint.

94. Defendant incorporates by reference the allegations set forth in the above proceeding paragraphs as if fully and completely set forth herein.

95. Paragraph 95 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 95 of the Complaint.

96. Paragraph 96 of the Complaint calls for a legal conclusion and therefore requires no response. To the extent that it requires a response, Defendant denies the allegations in Paragraph 96 of the Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

1. The Complaint fails to state a claim upon which relief may be granted.

Second Affirmative Defense

2. Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

Third Affirmative Defense

3. Defendant invokes the defenses, protections and limitations of the Fair Labor Standards Act, 29 U.S.C. §201 et seq. ("FLSA").

Fourth Affirmative Defense

4. At all times, Defendant acted in good faith and had reasonable grounds for believing his actions were in compliance with the FLSA.

Fifth Affirmative Defense

5. Defendant did not know or show reckless disregard for whether his conduct was prohibited by the FLSA.

Sixth Affirmative Defense

6. This action is barred to the extent Plaintiff seeks recovery for time that is not compensable time, i.e. "hours worked" under the FLSA.

Seventh Affirmative Defense

7. In the alternative, Defendant is entitled to offset monies or other consideration paid or provided to Plaintiff by Defendants for periods in which Plaintiff was not engaged to

work.

Eighth Affirmative Defense

8. To the extent that Plaintiff may seek punitive damages, Plaintiff's recovery is limited by applicable provisions of the FLSA. Any award of punitive damages to Plaintiff in this case would be in violation of the FLSA

Ninth Affirmative Defense

9. Plaintiff is not entitled to punitive/liquidated damages as Defendants did not act or fail to act in a manner sufficient to give rise to punitive/liquidated damages liability.

Tenth Affirmative Defense

10. Without assuming the burden of proof, Plaintiffs were compensated for all hours worked in excess of 40 hours in any particular workweek (as Plaintiff reported his time worked) at a rate not less than that set forth by the overtime provisions of the FLSA.

Eleventh Affirmative Defense

11. Without assuming the burden of proof, Defendants complied with all recordkeeping requirements of the FLSA.

Twelfth Affirmative Defense

12. The Plaintiff's claims are estopped by the submission of his own time records, for which Defendant compensated him for all overtime worked and claimed.

Thirteenth Affirmative Defense

13. Without assuming the burden of proof, Plaintiffs and members of the purported class or collective action are not similarly situated. The potential claims of the purported class members reflect variability.

Fourteenth Affirmative Defense

14. Plaintiffs have failed to mitigate their alleged damages.

Fifteenth Affirmative Defense

15. Plaintiff's claims are barred by the doctrines of waiver, estoppel and/or laches.

Sixteenth Affirmative Defense

16. Some or all of Plaintiff's claims are barred by accord and satisfaction, settlement and/or payment and release.

Seventeenth Affirmative Defense

17. Defendants' actions were in good faith conformity with and/or reliance on administrative regulation, order, ruling, approval, interpretation, or practice of the Department of Labor.

Eighteenth Affirmative Defense

18. Defendants reserve the right to assert further affirmative defenses as they become evident through discovery investigation.

Nineteenth Affirmative Defense

19. All actions taken by Defendants with respect to Plaintiff were supported by legitimate business reasons.

PRAYER FOR RELIEF

WHEREFORE Defendant respectfully requests that this Court dismiss all claims by Plaintiff against Defendant, with prejudice, and that this Court grant such other and further relief, legal and equitable, including attorney's fees, as it deems just and proper.

Date: 12/13/2018



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